



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0050]

Hours of Service of Drivers: Application for an Exemption from Cleveland-Cliffs Steel, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA announces its decision to grant Cleveland-Cliffs Steel, LLC (Cliffs), formerly known as ArcelorMittal Indiana Harbor, LLC, exemption from the hours of service (HOS) that allows its employee-drivers with commercial driver's licenses (CDLs) who transport scrap metal on two trucks between their production and shipping locations on public roads to work up to 16 hours per day and to return to work with less than the mandatory 10 consecutive hours off duty. The exemption is similar to the exemption that allows Cliffs' drivers transporting steel coils to work the same HOS schedule. Unlike the steel coil exemption, the scrap metal trucks comply with the heavy hauler trailer definition, height of rear side marker lights restrictions, tire loading restrictions, and the coil securement requirements in the FMCSRs.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending May 11, 2027.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, D.C., 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West

Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations. The online Federal document management system is available 24 hours a day, 365 days a year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Cliffs' Application for Exemption

Cliffs, formerly known as ArcelorMittal, requests an exemption to allow its employee-drivers with CDLs who transport scrap metal on two trucks between their

production and shipping locations to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty. The request is similar to the exemption previously granted that allows Cliffs' drivers transporting steel coils to work the same HOS and travel the same distances and routes between their production and shipping locations. Unlike the steel coil exemption, the scrap trucks would comply with the definition of a "heavy hauler trailer" in 49 CFR 393.5; the required "height of rear side marker lights restrictions" in 49 CFR 393.11 Table1 – Footnote 4; the "tire loading restrictions" in 49 CFR 393.75(f); and the "coil securement requirements" in 49 CFR 393.120.

Cliffs (USDOT 1313214) operates a steel plant in East Chicago, Indiana, its principal place of business. Several public roadways run through the plant area. Scrap metal produced in one portion of the plant must be transported over two short segments of public highway to another section of the plant. Both points where the vehicles cross are controlled intersections, having either traffic lights or a combination of traffic lights and signs. The first public road the CMVs cross is Riley Road and it was controlled by a traffic signal in both directions; however, the City of East Chicago removed the traffic lights and is in the process of replacing them with four-way stop signs. The distance traveled is 80 feet. The average number of crossings at this intersection is 32 per day. The second crossing is at Dickey Road and 129th Street, which is controlled by a stop sign and traffic light. The distance traveled here is .2 miles. The trucks cross 129th Street 32 times per day.

According to Cliffs, the current HOS regulations create problems as employee-drivers typically work an 8-hour shift plus overtime while employees in the production and shipping areas work 12-hour shifts. Employee-drivers must go home under the current arrangement, leaving a 4-hour gap between production and the driver's schedule, creating an overrun of scrap metal for disposal and/or recycling.

Cliffs advised that it would ensure that all employee-drivers would not work more than 16 hours per shift, would receive 8 hours off duty between shifts, and would not be allowed to drive more than 10 percent of their total workday.

Cliffs acknowledged in its application that these scrap metal truck drivers would remain subject to all of the other applicable Federal regulations. This includes CDLs, controlled substance and alcohol testing, inspection, maintenance, and repair of vehicles. A copy of Cliffs' application for the exemption is available for review in the docket for this notice.

Comments

FMCSA published a notice of the application in the **Federal Register** on August 26, 2021, requesting public comment (86 FR 47708). The Agency received comments from five individuals.

Jeffrey Hill wrote "We have regulations in place to ensure drivers are well rested and alert during service hours. The company should not be granted additional hours. Sixteen hours is way too many hours. These drivers will be over worked and become fatigued." Mathew Hillegas commented "This sounds like an accident just looking for place to happen. There is so much traffic congestion in this area that requires a driver to be on their A game not half wore out with little chance to get proper rest."

A&A Express, LLC stated, "They should not be approved for the waiver. I own and operate a trucking company and drivers need their rest and sleep. Running those longer hours and with less than a 10-hour break is too dangerous. Barry Owen wrote "Companies are pushing drivers more than ever, the truck drivers are fatigued enough! Now companies want longer hours for the drivers! As a driver, I say no!"

Michael Millard stated "I hope the FMCSA denies the application for an exception to the HOS submitted by Cleveland-Cliffs Steel, LLC. The application goes against the HOS and general human needs; whereas, eight hours off between shifts

involves commute time to and from work, time for personal hygiene and wellness

limiting drivers to possibly less than five hours of sleep between shifts.”

FMCSA Response

FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any “imminent hazard” or other out-of-service orders. The Agency conducted a comprehensive investigation of the safety performance history of the motor carrier during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

The request is similar to the exemption previously granted that allows Cliffs’ drivers transporting steel coils to work the same HOS and travel the same distances and routes between their production and shipping locations. Unlike the steel coil exemption, the scrap trucks would comply with the definition of a “heavy hauler trailer” in 49 CFR 393.5; the required “height of rear side marker lights restrictions” in 49 CFR 393.11 Table1 – Footnote 4; the “tire loading restrictions” in 49 CFR 393.75(f); and the “coil securement requirements” in 49 CFR 393.120. As the Agency stated in the steel coil exemption, this is somewhat comparable to current HOS regulations that allow certain “short-haul” drivers a 16-hour driving “window” once a week (49 CFR 395.1(o)) and other non-CDL short-haul drivers two 16-hour duty periods per week (49 CFR 395.1(e)(2)), provided specified conditions are met. However, current regulations require a minimum of 10 hours off duty between duty periods.

FMCSA Decision

The FMCSA has evaluated Cliffs' application for exemption and the public comments and hereby grants the exemption. The Agency believes that Cliffs' overall safety performance, as well as other factors discussed in its application (principally the

short distances and low speeds of its operations on public highways) will enable it to achieve a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption (49 CFR 381.305(a)).

Terms and Conditions for the Exemption

1. Period of the Exemption

The exemption is effective for a 5-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending May 11, 2027.

2. Extent of the Exemption

The exemption from the requirements of 49 CFR part 395 is restricted to Cliffs' scrap truck drivers. Drivers utilizing the exemption may work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

The CMVs must cross only on Riley Road, where they travel 80 feet and Dickey Road and 129th Street where they travel .2 miles to move scrap metal from one part of the plant to another section of the plant. All drivers must have CDLs, and drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations.

3. Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with these exemptions with respect to a firm or person operating under this exemption.

4. Notification to FMCSA

Cliffs must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must be emailed to *MCPSD@DOT.GOV* and include the following information:

- a. Exemption Identifier: “Cleveland-Cliffs Steel, LLC”;
- b. Name and USDOT number of the motor carrier;
- c. Date of the accident;
- d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;
- e. Driver's name and driver's license number;
- f. Vehicle number and State license number;
- g. Number of individuals suffering physical injury;
- h. Number of fatalities;
- i. The police-reported cause of the accident;
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

5. Termination

FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,
Deputy Administrator.

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